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IN THE

Supreme Court of the United States

October Term, 1967.

No. 445.

AVCO CORPORATION,

v. *Petitioner,*

AERO LODGE NO. 735, INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS, ET. AL. *Respondents.*

On Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit.

BRIEF OF LABOR RELATIONS COMMITTEE OF COUNCIL OF STATE CHAMBERS OF COMMERCE, PHILADELPHIA MARINE TRADE ASSOCIATION AND AMERICAN DREDGING COMPANY, AMICI CURIAE.

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IN THE

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No. 445.

AVCO CORPORATION,

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v.

AERO LODGE NO. 735, INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS, ET AL.,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT.

BRIEF OF LABOR RELATIONS COMMITTEE OF COUNCIL OF STATE CHAMBERS OF COMMERCE, PHILADELPHIA MARINE TRADE ASSOCIATION AND AMERICAN DREDGING COMPANY, AMICI CURIAE.

STATEMENT OF INTEREST.

The Council of State Chambers of Commerce is a national organization of thiry-two state chambers of commerce. The constituencies of its member state chambers

cover over 50,000 firms in every type of business. The Council's Labor Relations Committee * is the Council's coordinating agency for the development of policies of national importance in the labor-management relations field.

Philadelphia Marine Trade Association is an association of seventy members who are engaged as steamship lines, steamship agents, stevedores, marine terminal operators and in other maritime activities in the port of Philadelphia. The Association is the collective bargaining agency for all of its members with respect to the employment of over 4,000 longshoremen, carloaders, clerks and checkers, timekeepers, carpenters, ship cleaners and other maritime workers on the Philadelphia waterfront.

American Dredging Company is an individual employer engaged in the business of dredging in navigable waters, land reclamation and similar operations.

The Principal Issue.

At the root of this case is the question whether the limitations of the Norris-LaGuardia Act, 47 Stat. 70 (1932), 29 U. S. C. 101 *et seq.*, upon the jurisdiction of federal courts to grant injunctions in labor disputes are to be extended to state courts in the context of union breaches of the no-strike obligations of collective bargaining agreements, and, specifically, whether this is to be accomplished indirectly by the procedural device of removal.

In proceedings before a state court, petitioner, Avco Corp., obtained a temporary injunction restraining respondent union, its officers, and others from engaging in strikes alleged to be in breach of the no-strike obligation of the collective bargaining agreement in effect between Avco and the union. Thereafter, respondents filed a petition to remove the action to the United States District Court for

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* This brief *amici curiae* is filed pursuant to consents, given by all parties to the above titled cases, mailed to the Clerk of this Court on November 15, 1967.

the Middle District of Tennessee under 28 U. S. C. 1441(b).[1] The district court denied the motion of Avco to remand and granted respondents' motion to dissolve the temporary injunction. Inasmuch as this Court, in *Sinclair Refining Co. v. Atkinson*, 370 U. S. 195 (1962), held that § 4 of the Norris-LaGuardia Act[2] continues to deprive federal courts of jurisdiction to enjoin breaches of no-strike agreements, the result of these proceedings was to confine the employer to the federal court, which could not grant the important relief it sought, and to deny it access to the state court, which could grant that relief.

The narrow issue framed in this case, whether the action should have been remanded to the state court,[3] necessarily involves a question of great importance to the peaceful conduct of labor-management relations. By allowing the tactic of removal, the courts below have denied the existence of any power in state courts to grant injunc-

1. 62 Stat. 937 (1948). "Any civil action of which the district courts have original jurisdiction founded on a claim or right arising under the Constitution, treaties or laws of the United States shall be removable without regard to the citizenship or residence of the parties . . . ."

2. "No court of the United States shall have jurisdiction to issue any restraining order or temporary or permanent injunction in any case involving or growing out of any labor dispute to prohibit any person or persons participating or interested in such dispute (as these terms are herein defined) from doing, whether singly or in concert, any of the following acts:

(a) Ceasing or refusing to perform any work or to remain in any relation of employment;

* * * *

(e) Giving publicity to the existence of, or the facts involved in, any labor dispute, whether by advertising, speaking, patrolling, or by any other method not involving fraud or violence;

* * *

(i) Advising, urging, or otherwise causing or inducing without fraud or violence the acts heretofore specified, regardless of any such undertaking or promise as is described in Section 3 of this title."

3. The question whether the district court properly dissolved the state court temporary injunction is not material if the action should have been remanded.

tions restraining strikes in breach of collective bargaining agreements, thus indirectly extending the Norris-LaGuardia Act to state courts.

Basis of Interest.

The Labor Relations Committee of the Council of State Chambers of Commerce is participating in this case in the interest of business generally and because of its view that the result of the adoption of the Court of Appeals' decision in this case would be to leave employers with inadequate means for effectively enforcing no-strike clauses in collective bargaining agreements. The existence of any power in state courts to enjoin breaches of no-strike agreements is of obvious interest to thousands of employers throughout the country. Virtually all major collective bargaining agreements contain no-strike restrictions. Most of these restrictions are absolute. The bulk of those which limit the ban tie it to disputes subject to grievance and/or arbitration procedures,[4] thus reflecting the coordinate roles of the no-strike agreement and the arbitration process in insuring stable industrial relations. However, despite the widespread use of the no-strike agreement, work stoppages during the terms of collective bargaining agreements continue to be a major problem. During each of the six years that the Bureau of Labor Statistics has published records on this subject,[5] approximately one-third of all work stoppages have occurred during the term of an existing collective bargaining agreement.[6]

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4. *Bureau of Labor Statistics, U. S. Dept. of Labor, Major Collective Bargaining Agreements—Arbitration Procedures* 83-94 (Bulletin No. 1425-6, 1966).

5. See *Bureau of Labor Statistics, U. S. Dept. of Labor, Analysis of Work Stoppages, 1960* 5 (Bulletin No. 1302).

6. *Bureau of Labor Statistics, U. S. Dept. of Labor, Analysis of Work Stoppages,* (Bulletin Nos. 1339, p. 9, *1961;* 1381, p. 9, *1962;* 1420, p. 12, *1963;* 1460, p. 12, *1964;* 1525, p. 11, *1965*); *Bureau of Labor Statistics, U. S. Dept. of Labor, Work Stoppages in 1966,* 4 (Summary Release July 1967).

Injunctive relief is an important means of minimizing this serious problem by insuring compliance with contractual no-strike obligations and providing the industrial peace which they are designed to achieve.

The interest of Philadelphia Marine Trade Association results from the nature of the business of its members and their experience with the no-strike clauses of their collective bargaining agreements.

The maritime industry on the east coast and the employers represented by Philadelphia Marine Trade Association have long been plagued by highly volatile labor relations both aboard ships and at shore side. Because of the nature of their business, maritime employers are particularly vulnerable to unannounced work stoppages and wildcat strikes. To meet this problem, each of the collective bargaining agreements between Philadelphia Marine Trade Association and the various locals of the International Longshoremen's Association provides for the expeditious resolution of grievances by impartial arbitration in exchange for labor's promise not to engage in any strikes or work stoppages during its term.

The great losses suffered by maritime employers from strikes and work stoppages in violation of the no-strike clauses in their collective bargaining agreements make it essential that these no-strike agreements be specifically enforceable. The damage remedy is particularly inadequate for maritime employers since the unions in this industry are usually without sufficient assets to satisfy a judgment.

American Dredging Company has a very special interest in the issues and outcome of this case. American was the employer in *American Dredging Co. v. Local 25, Operating Engineers,* 338 F. 2d 837 (3rd Cir. 1964), *cert. denied,* 380 U. S. 935 (1965), which arose out of a strike in breach of the no-strike provisions of its collective bargaining agreements with Local 25. After the strike began, American obtained a preliminary injunction of limited

duration in a state court. Four days later, before the injunction could be extended after hearing, the union removed the action to the federal district court which denied American's motion to remand. Because, under *Sinclair Refining Co. v. Atkinson, supra,* the district court could not grant an injunction, American was left without any further possibility of injunctive relief. American appealed to the Court of Appeals for the Third Circuit which held that the action was improperly removed and should have been remanded because the district court did not have original jurisdiction. This Court denied certiorari.

The strike which precipitated the foregoing proceedings continued for over two months while the matter was pending in the district court and after the appeal was filed. Prior to this strike, American had been plagued by a history of contractually-prohibited work stoppages by Local 25. However, since the decision of the Court of Appeals, American has enjoyed a period of stable labor relations. When the term of the collective bargaining agreements involved in the litigation expired, American and Local 25 entered into agreements which contained the same no-strike obligations. Since the decision of the Court of Appeals, disputes have been resolved through the grievance and arbitration procedures of the agreements, and not through economic combat as before. American is vitally interested that this condition continue.

SUMMARY OF ARGUMENT.

I.

Legislative history clearly demonstrates that Congress, following a fundamental purpose of creating industrial peace and stability, enacted § 301 of the Labor Management Relations Act of 1947, 61 Stat. 156, 29 U. S. C. § 185, to assure the enforcement of collective bargaining agreements and, particularly, to provide an effective means of enforcing no-strike obligations undertaken by unions in such agreements. Although § 301 gives federal courts jurisdiction of actions for the violation of collective bargaining agreements, Congress intended to build upon existing state machinery, including the injunctive remedy in those states where it was available, and to give state courts concurrent jurisdiction.

In *Textile Workers v. Lincoln Mills,* 353 U. S. 448, 456 (1957), this Court held that the substantive law to be applied in suits under § 301 is "federal labor law, which the courts must fashion from the policy of our national labor laws." As this Court recognized in *Sinclair Refining Co. v. Atkinson,* 370 U. S. 195 (1962), this judicial mandate contains its own inherent limitations. It was there held that the express terms of the Norris-LaGuardia Act continued to deprive federal courts of jurisdiction to enjoin strikes in breach of no-strike clauses, despite the basic congressional policy reflected in § 301 of assuring union responsibility for the observance of the no-strike obligations assumed in collective bargaining agreements. Because Congress, in enacting § 301, had considered repeal or amendment of Norris-LaGuardia to allow such injunctions and had specifically declined to do so, this Court concluded that it could not use its power under § 301 to fashion federal labor law which would have disregarded that specific expression of legislative intent.

Sinclair does not mean that the Norris-LaGuardia Act, which is limited in its terms to federal courts, is now part of the federal labor policy to be applied in all suits under § 301. The decision in *Sinclair* was a matter of compelled statutory construction and not an application of the judicial process of fashioning national labor law.

As this Court, in *Sinclair*, could not disregard Congress' intention not to repeal or alter Norris-LaGuardia, it should not, in this case, deny the injunctive remedy to state courts and thus disregard Congress' intent in § 301 to build upon existing state machinery in order to provide more effective means for enforcement of contractual no-strike obligations. To do otherwise, is to leave employers in a worse position with respect to enforcement of collective bargaining agreements than they were before the enactment of § 301.

The requirement that there be uniformity in the substantive labor law to be fashioned under § 301, as set forth in *Local 174, Teamsters v. Lucas Flour Co.*, 369 U. S. 95 (1962), provides no warrant for concluding that state courts are deprived of this important remedy merely because federal courts are denied it. Uniformity is necessary only to prevent uncertainty as to the meaning of contract language from having a disruptive effect upon the formation of the collective bargaining agreement and the private settlement of disputes under it. Lack of uniformity does not have this effect when these consensual processes have broken down. Indeed, in the area where uniformity is not required, federal labor law endorses the application of state law which comports with federal labor policy. *Int'l. Union, United Automobile, Aerospace, & Agricultural Implement Workers (UAW) v. Hoosier Cardinal Corp.*, 383 U. S. 696 (1966). That state court injunctions remain available to compel the observance of no-strike agreements is not only consistent with the basic policies of § 301 but required by the express intentions of Congress. Not only does an effectively-enforceable no-strike agreement directly

provide labor peace and stability, but its availability encourages management to enter into collective agreements with labor and encourages labor to use the arbitration machinery of such agreements to resolve industrial disputes.

II.

The removal statute, 28 U. S. C. § 1441, should not be used to frustrate state court injunctive power which is so vitally a part of § 301.

This action was not removeable because the Norris-LaGuardia Act deprived the federal district court of original jurisdiction over it. "Original jurisdiction" in the removal statute must be interpreted in light of the statutes through which Congress has exercised its constitutional power to limit and define the jurisdiction of the lower federal courts. Since Norris-LaGuardia is such a statute, it precluded removal in this case.

Moreover, jurisdiction means power to entertain a suit, consider its merits and render a binding decision thereon. Plainly, if a district court is required under *Sinclair* to dismiss for lack of jurisdiction an action originally brought there, it cannot accept jurisdiction on removal from a state court and retain the case without power to do any more than hold it in suspension and eventually dismiss it.

ARGUMENT.

I. The Fundamental Policies of Section 301 Not Only Permit, But Endorse, State Court Injunctive Relief Against Breaches of the No-strike Obligations of Collective Bargaining Agreements.

It was not until the enactment of § 301 of the Labor Management Relations Act of 1947 that the present issue of state court injunction power became a matter of concern to the federal courts.

The brief language of § 301 that labor organizations may be sued as entities and that suits to enforce collective bargaining agreements may be brought in federal courts does not, itself, cast any substantial light upon the important issue in this case, and it is to the purposes of Congress, as reflected in the legislative history and elucidated by this Court, that one must look for guidance.

Section 301 was enacted as part of a body of legislation which reflected a general congressional judgment that existing law and its administration had been too much weighted in favor of labor unions and that equalizing reform was necessary to cure certain abuses, to prevent industrial strife and to encourage the resolution of industrial disputes by private agreement. See S. Rep. No. 105, 80th Cong. 1st Sess. 1, 2, I Leg. Hist. 407, 408; H. R. Rep. No. 245, 80th Cong. 1st Sess. 3, 4, I Leg. Hist. 294, 295; Comparison of National Labor Relations Act of 1935 with Labor Management Relations Act of 1947, II Leg. Hist. 1661-1680.

In this context, § 301 was intended to assure the enforcement of collective bargaining agreements, and particularly to provide an effective method of enforcing no-strike obligations undertaken by unions in such agreements. This objective is clearly stated in the Senate Committee Report:

> "If unions can break agreements with relative impunity, then such agreements do not tend to stabilize

industrial relations. The execution of an agreement does not by itself promote industrial peace. The chief advantage which an employer can reasonably expect from a collective labor agreement is assurance of uninterrupted operation during the term of the agreement. Without some effective method of assuring freedom from economic warfare for the term of the agreement, there is little reason why an employer would desire to sign such a contract.

Consequently, to encourage the making of agreements and to promote industrial peace through faithful performance by the parties, collective agreements affecting interstate commerce should be enforceable in the Federal courts. Our amendment would provide for suits by unions as legal entities and against unions as legal entities in the Federal courts in disputes affecting commerce." S. Rep. No. 105, 80th Congress, 1st Sess. 16, I Legis. Hist. 422.

In *Textile Workers v. Lincoln Mills,* 353 U. S. 448 (1957), this Court held that § 301 did not merely create a new area of jurisdiction for the federal courts but expressed a federal policy that industrial peace can best be obtained by judicial enforcement of collective bargaining agreements. *Id.* at 455. This Court then stated that the substantive law to be applied in suits under § 301 is "federal law, which the courts must fashion from the policy of our national labor laws." *Id.* at 456. The outlines of this process were set forth as follows:

"The Labor Management Relations Act expressly furnishes some substantive law. It points out what the parties may or may not do in certain situations. Other problems will lie in the penumbra of express statutory mandates. Some will lack express statutory sanction but will be solved by looking at the policy of the legislation and fashioning a remedy that will ef-

fectuate that policy. The range of judicial inventiveness will be determined by the nature of the problem." *Id.* at 457.

In fashioning the law under Section 301 the courts have been careful to effectuate Congress' basic purpose of insuring industrial peace through the use of the no-strike clause. The host of decided cases which enhance and promote the private arbitration process[7] reflect judicial respect for, and concern to effectuate, this basic purpose. Arbitration has become the preferred instrument of federal labor policy because it is the *quid pro quo* for the no-strike agreement. *Textile Workers v. Lincoln Mills,* 353 U. S. 448, 453, 455 (1957). Indeed, the arbitration process and effective enforcement of the no-strike agreement operate in tandem to provide industrial peace and stability and to promote the collective bargaining process.[8] The availability of an effectively enforceable no-strike clause compels labor to utilize the peaceful machinery of arbitration for the resolution of disputes.

The overriding congressional purpose to promote agreements not to strike is further emphasized by the holding of this Court in *Local 174, Teamsters v. Lucas Flour Co.,* 369 U. S. 95 (1962) that a no-strike agreement may be inferred from an agreement to arbitrate.

At the same time, in *Dowd Box Co. v. Courtney,* 368 U. S. 502 (1962), this Court recognized that Congress intended that the state courts should have a concurrent role in advancing the fundamental policy of § 301 and that Congress intended to enhance, rather than displace, state machinery for enforcement of collective bargaining agreements. This Court stated that:

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7. *E.g., United Steelworkers v. American Manufacturing Co.,* 363 U. S. 564 (1960); *United Steelworkers v. Warrior & Gulf Navigation Co.,* 363 U. S. 574 (1960); *United Steelworkers v. Enterprise Wheel & Car Corp.,* 363 U. S. 593 (1960).

8. See *United Steelworkers v. Warrior & Gulf Navigation Co., supra,* at 583.

"Congress manifested its complete awareness of both the existence and limitations of state court remedies for violations of collective agreements."

* * *

"The clear implication of the entire record of the congressional debates in both 1946 and 1947 is that the purpose of conferring jurisdiction upon the federal district courts was not to displace, but to supplement, the thoroughly considered jurisdiction of the courts of the various States over contracts made by labor organizations."

* * *

"It is obvious that Congress did not intend this remedial measure to destroy the foundation upon which it was built." *Id.* at 510, 511, 513.

In the same vein, the legislative history contains a statement by Senator Taft which supports the conclusion that Congress did not intend to deny state courts the use of the injunction remedy. At committee hearings on the Case Bill, a predecessor of the Labor Management Relations Act of 1947, Senator Taft, whom this Court has described as "one of the authors of this legislation that bore his name" and "a man generally regarded in the Senate as a very able lawyer and one upon whom the Senate could rely for accurate, forthright explanations of legislation with which he was connected,"[9] said with reference to a provision of that bill which was similar to § 301:

"This [bill] would carry to a civil injunction process if it were one generally usable under the laws of equity, I think, when you say it is binding and enforceable; whatever the equitable remedies might be in that State, or might be considered proper by the

9. *Sinclair Refining Co. v. Atkinson, supra,* at 208, 209.

court, could be used." Hearings on H. R. 4908 (Labor Disputes Act of 1946) before a Subcommittee of the Senate Committee on Education and Labor, 79th Congress, 2d. Sess. 11 (1946).[10]

Labor legislation is peculiarly the product of legislative compromise of strongly held views. *NLRB v. Allis-Chalmers Mfg. Co.*, 87 S. Ct. 2001, 2006 (1967). In *Sinclair Refining Co. v. Atkinson*, this Court held that the express language of the Norris-LaGuardia Act continued to deprive federal courts of jurisdiction to enjoin strikes in breach of no-strike clauses, despite the basic congressional policy reflected in § 301 of assuring union responsibility for the observance of the no-strike obligations assumed in collective bargaining agreements.

In reaching that conclusion this Court was careful to mark the limit of judicial power to fashion uniform federal labor law under § 301. The absolute prohibitions clearly expressed in Norris-LaGuardia, combined with unmistakable, specific expressions of congressional intent not to alter or repeal Norris-LaGuardia, prevented the Court from using § 301 to fashion federal labor law which would have accommodated out of existence the limitation imposed by Congress upon the jurisdiction of federal courts by Norris-LaGuardia. By the same token, it is equally clear that the dominant Congressional purposes in the enactment of § 301 are not to be frustrated by extending Norris-LaGuardia, an act expressly limited by its terms to the jurisdiction of federal courts and specifically intended not to affect state courts,[11]

10. Like § 301 as enacted and unlike the bill initially passed by the House in the 80th Congress (see *Sinclair*, 370 U. S. at 206), the Case Bill did not purport to repeal or amend Norris-LaGuardia with respect to breach of contract strikes—although it did specifically do so with respect to violence and intimidation. Hearings on H. R. 4908, *supra*, at 4 & 5.

11. *E.g.*, 75 CONG. REC. 5464 (remarks of Representative Michener) State courts are "at liberty to issue any type of an injunction which is permitted in the State where the court has jurisdiction." *Id.* at 5478 (remarks of Representative LaGuardia) "The

to limit the powers of state courts under the guise of judicially-fashioned federal labor law.

There is nothing in *Sinclair* which can be construed to extend Norris-LaGuardia or suggest that federal labor law or policy prohibits all courts from enjoining breaches of no-strike agreements. The *Sinclair* decision itself was carefully tailored to avoid misinterpretation in these respects. Repeated references to federal or United States courts clearly indicate the limited application of the decision. The question before the Court was resolved as a matter of compelled statutory construction and not through the judicial process of fashioning national labor law. The Court read the strict terms of the Norris-LaGuardia Act as requiring a departure from the federal labor policy of promoting industrial peace through enforcement of collective bargaining agreements, even though that policy might be advanced by the availability of the injunctive remedy. And the Court expressly held that the action for injunctive relief was properly dismissed "for lack of jurisdiction."

In enacting § 301, Congress was aware of the state court remedies available for enforcement of collective bargaining agreements.[12] It specifically considered the relation between Norris-LaGuardia and its new legislation. Yet Congress manifested no desire either to restrict state remedies or extend Norris-LaGuardia to state courts. In the absence

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bill does not take one iota of jurisdiction—because we have not the power—from the State courts and does not change any State law."

Norris-LaGuardia was expressly enacted under Congress' constitutional authority to limit and define the jurisdiction of the lower federal courts. See note 22, *infra*, and accompanying text. Its limited scope is further suggested by the fact that much congressional discussion concerned abuses by federal judges. *E.g.*, S. Rep. 163, 72d Cong. 1st Sess. 18; 75 Cong. Rec. 5478 (remarks of Representative LaGuardia) "Gentlemen, there is one reason why this legislation is before Congress. . . . Disobedience of the law on the part of a few Federal Judges." See *Sinclair Refining Co. v. Atkinson*, *supra*, 370 U. S. at 219 & n. 5 (Brennan, J., dissenting).

12. *Dowd Box Co. v. Courtney*, 368 U. S. 502, 510, 511, 513 (1962), quoted at p. 13, *supra*.

of such manifestations, and in the face of affirmative congressional intent to enhance the enforcement of collective bargaining agreements and to insure union responsibility to the no-strike obligations of such agreements, there is no warrant for concluding that federal labor law or policy denies the injunctive remedy to state courts. See *Shaw Electric Co., Inc. v. I. B. E. W. Local Union No. 98,* 418 Pa. 1, 13, 208 A. 2d 769, 775-76 (1965).

Section 301 does not embody or reflect any policy that requires state courts enforcing rights under collective bargaining agreements to withhold injunctive relief against union failure to comply with contractual no-strike obligations. On the contrary, § 301 was designed to enhance the enforcement of collective bargaining agreements and, in particular, to insure union responsibility to the no-strike obligations of such agreements by building upon existing state machinery. As Justice Traynor of the California Supreme Court aptly stated:

> "We would give altogether too ironic a twist to this purpose if we held that the actual effect of the legislation was to abolish in state courts equitable remedies that had been available, and leave an employer in a worse position in respect to the effective enforcement of his contract than he was before the enactment of section 301." *McCarroll v. Los Angeles County Dist. Council of Carpenters,* 49 Cal. 2d 45, 63-64, 315 P. 2d 322, 332 (1957), *cert. denied,* 355 U. S. 932 (1958).

In enacting Section 301, Congress recognized that the collective bargaining agreement could best serve the cause of industrial peace if it were of equal benefit to both labor and management and, accordingly, § 301 was designed to function as an equalizing instrument. Inasmuch as this Court has held that an employer's contractual obligation to arbitrate is specifically enforceable,[13] the equalizing pur-

13. *Textile Workers v. Lincoln Mills,* 353 U. S. 448 (1957).

pose of § 301 requires that a union's corresponding contractual obligation not to strike should also be specifically enforceable in those states where specific enforcement is available.

Any interpretation of Norris-LaGuardia or *Sinclair* which would deny state courts the right to enjoin breaches of contractual no-strike obligations is clearly at odds with the fundamental purpose of § 301 to encourage industrial peace by assuring the enforceability of no-strike obligations. In the overwhelming majority of cases, the state court injunctive remedy, in those states where it is available, is the most effective means of accomplishing this. By the very nature of equity jurisprudence, state courts allow it because other remedies are inadequate. The damage suit must await its turn on crowded court dockets. Its pendency may often serve to exacerbate labor-management relations. If the employer is not forced to dismiss it in the interest of future harmony, then the vagaries of the jury, the difficulty of measuring damages such as permanent loss of customers, and the insufficiency of the union treasury makes adequate recompense extremely rare. Because it is often such an illusory remedy, neither the availability nor institution of a damage suit can prevent or stop industrial strife and economic warfare in any significant manner.

In most situations, specific enforcement of arbitrators' awards which prohibit breach of contract strikes is likewise an impractical alternative. This is because the overwhelming majority of collective bargaining agreements provide an *ad hoc* method of selecting arbitrators which results in many weeks or months delay before an arbitrator can be selected, a hearing can be held and an award can be rendered, rather than a permanent umpire who can render an almost immediate award.[14] In addition, some collective

14. See *Bureau of Labor Statistics, U. S. Department of Labor, Major Collective Bargaining Agreements—Arbitration Procedures* 33-47 (Bulletin No. 1425-6, 1966).

agreements give the employer only limited access or no access to the arbitration procedure. See *Atkinson v. Sinclair Refining Co.*, 370 U. S. 238, 243 (1962).

Despite the clear congressional purpose to provide adequate means of enforcing compliance with contractual no-strike obligations, the Court below interpreted the uniformity principle expressed in *Local 174, Teamsters v. Lucas Flour*, 369 U. S. 95 (1962), as requiring that state courts be deprived of the injunction remedy merely because this Court has held that federal courts are deprived of that remedy. Only blind adherence to "uniformity" can support such a result.

In *Lucas Flour*, this Court held that a state court was not free to apply its own individualized local law to determine whether a no-strike agreement was to be implied from an express agreement to arbitrate. Although the Court declared that uniform federal substantive labor law must be paramount in § 301 suits, it did so for reasons which are totally inapplicable to the present question.

> "The possibility that individual contract terms might have different meanings under state and federal law would inevitably exert a disruptive influence upon both the negotiation and administration of collective agreements. Because neither party could be certain of the rights which it had obtained or conceded, the process of negotiating an agreement would be made immeasurably more difficult by the necessity of trying to formulate contract provisions in such a way as to contain the same meaning under two or more systems of law which might some day be invoked in enforcing the contract. Once the collective bargain was made, the possibility of conflicting substantive interpretation under competing legal systems would tend to stimulate and prolong disputes as to its interpretation. Indeed, the existence of possibly conflicting legal concepts might substantially impede the parties' willingness to agree to contract terms providing for final arbitral or judicial resolution of disputes." *Id.* at 103, 104.

The area for application of uniform federal labor law was further elucidated by this Court in *Int'l Union, United Automobile, Aerospace & Agricultural Implement Workers (UAW) v. Hoosier Cardinal Corp.*, 383 U. S. 696 (1966). In declining to create a uniform statute of limitations for suits under § 301 and in holding that state statutes of limitations governed, this Court reiterated the grounds for uniformity set forth in *Lucas Flour* and further stated that:

> "The need for uniformity, then, is greatest where its absence would threaten the smooth functioning of those consensual processes that federal labor law is chiefly designed to promote—the formation of the collective agreement and the private settlement of disputes under it. For the most part, statutes of limitations come into play only when these processes have already broken down. Lack of uniformity in this area is therefore unlikely to frustrate in any important way the achievement of any significant goal of labor policy. Thus, although a uniform limitations provision for § 301 suits might well constitute a desirable statutory addition, there is no justification for the drastic sort of judicial legislation that is urged upon us." 383 U. S. at 702, 703.

After holding that the state statute of limitations applied, this Court then affirmed the lower courts' decisions that the state's six year oral contract rule, rather than its 20 year written contract rule, applied, particularly because it comported with a goal of federal policy, as reflected in the unfair labor practices segment of the Labor Management Relations Act, that there should be a relatively rapid disposition of labor disputes.

The impact of *Lucas Flour* and *Hoosier Cardinal* upon the momentous question in this case is large and plain. (1) Like the question of applicable statute of limitations, the question whether a contract violation may be enjoined is not a subject requiring uniform law since diverse answers

to the question will not result in uncertainty as to the meaning of particular contract terms which would otherwise result from dual bodies of law, state and federal.[15] (2) When the consensual processes of collective bargaining and private settlement of disputes have broken down, as they have when a court is asked to enjoin contract violations, lack of uniformity is unlikely to materially frustrate any significant goal of federal labor policy. The uniformity requirement is not threatened or impaired because state courts can give a more effective remedy.[16] (3) In the area where uniformity is not required, federal labor law endorses the application of state law which comports with federal labor policy. As the shorter statute of limitations comports with the federal labor policy that there be a relatively rapid disposition of labor disputes, so does the state injunctive remedy comport with the fundamental congressional purpose to assure the enforceability of no-strike agreements.[17]

It has been suggested that the availability of the injunction remedy in state courts will make them the preferred forum for litigation of labor disputes. However, there is no evidence that the courts of those states which permit injunctions have, in fact, become a "preferred forum"; nor would the number of cases in the federal courts involving breaches of collective bargaining agreements suggest that federal courts are being avoided. Although the importance of the injunctive remedy cannot be overemphasized, the great quantity of litigation under § 301

15. "Surely, the interpretation of contractual clauses does not hinge on the form of relief to be granted." *Shaw Electric Co. v. I. B. E. W. Local Union No. 98,* 418 Pa. 1, 11, 208 A. 2d 769, 775 (1965).

16. *McCarroll v. Los Angeles County Dist. Council of Carpenters,* 49 Cal. 2d 45, 64, 315 P. 2d 322, 332-33 (1957), *cert. denied,* 355 U. S. 932 (1958).

17. See *Textile Workers v. Lincoln Mills, supra* at 457. "'[S]tate law, if compatible with the purpose of § 301, may be resorted to in order to find the rule that will best effectuate the federal policy."

involves the arbitration process and problems other than specific enforcement of no-strike agreements.

There is also no merit to any concern that the development of uniform substantive law will be undermined because litigation may gravitate to the state courts because they can grant a more effective remedy. In *Dowd Box Co. v. Courtney*, 368 U. S. 502 (1962), this Court recognized that the concurrent role which Congress intended for state courts was perfectly consistent with the paramount role of federal labor law.

> "It is implicit in the choice Congress made that 'diversities and conflicts' may occur, no less among the courts of the eleven federal circuits, than among the courts of the several States, as there evolves in this field of labor management relations that body of federal common law of which Lincoln Mills spoke. But this not necessarily unhealthy prospect is no more than the usual consequence of the historic acceptance of concurrent state and federal jurisdiction over cases arising under federal law. To resolve and accommodate such diversities and conflicts is one of the traditional functions of this Court." *Id.* at 514.[18]

Lucas Flour, supra, and *Smith v. Evening News*, 371 U. S. 195 (1962), are illustrations of how this type of federalism operates.

It would be indeed strange that Congress would have desired that federal forums be preferred at the cost of totally eliminating, in those states where it is available, the best means of insuring industrial peace and stability, for the injunction remedy does not only directly halt economic warfare once it has broken out, but its availability encourages management to enter into collective agreements with labor and encourages labor to use the arbitration machinery of such agreements to resolve industrial disputes.

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18. *Cf., Amalgamated Clothing Workers v. Richman Bros.*, 348 U. S. 511, 518-19 (1955).

II. The District Court Did Not Have Original Jurisdiction of Plaintiff's Action for Injunctive Relief Against Violations of the No-Strike Clause of the Parties Collective Bargaining Agreement.

No action is removable to a federal district court under 28 U. S. C. § 1441 unless it is within the "original jurisdiction" of the federal district courts. Any construction of this removal statute which uses § 301 to give the federal courts original jurisdiction and thus permit removal of an employer's action for injunctive relief against no-strike clause violations only to dismiss the complaint for lack of jurisdiction under the Norris-LaGuardia Act, as required by *Sinclair,* would defeat the essential purposes of § 301 as expressed by Congress and elucidated by this Court. Such a result would debilitate, rather than enhance, the remedies available to promote industrial peace by enforcement of collective bargaining agreements.

As the Court pointedly stated in *American Dredging Co. v. Local 25, Operating Engineers,* 338 F. 2d 837 (3d Cir. 1964), *cert. denied,* 380 U. S. 935 (1965):

> "It has been settled for almost a century that federal statutes should be construed and applied so as to avoid 'injustice' or 'absurd consequence.'"
>
> • • •
>
> "In a removal proceeding under § 1441 that statute must be harnessed in a real sense to the specific federal law (here § 301(a)) relied upon as conferring original jurisdiction upon the District Court.
>
> To hold that § 1441 may be recruited to defeat the Congressional purpose in enacting § 301(a) would be to mock reason and to deny justice. . . ." *Id.* at 842, 848.

Although the purpose of the removal statute is unclear, it was never intended to entirely foreclose remedies legitimately available in state courts,[19] much less to defeat affirmative congressional policy within Congress' constitutional commerce or other regulatory powers.

Only a most abstract definition of jurisdiction would require the conclusion that, despite the express terms of Norris-LaGuardia, federal district courts have original jurisdiction of an employer's action to enjoin breaches of a no-strike agreement. The jurisdiction which this Court found lacking in *Sinclair* and explicit in the text and purpose of the Norris-LaGuardia Act is jurisdiction in the fullest sense of the word. It was the intent of the Norris-LaGuardia Act to take the federal courts out of the business of issuing injunctions against strikes by depriving them of jurisdiction at the threshold of the case, leaving no room for temporizing or whittling away at the restriction. See *Sinclair Refining Co. v. Atkinson, supra,* at 202; *Marine Cooks & Stewards v. Panama SS. Co.,* 362 U. S. 365, 369 (1960); *Frankfurter & Greene, The Labor Injunction,* 199-202 (1930). The jurisdiction contemplated by Congress was the literal, practical concept of power to consider the merits of a case.

This practical view of jurisdiction was clearly set forth in *American Dredging Co. v. Local 25, Operating Engineers, supra:*

> "To say then that a District Court has *subject matter jurisdiction* of a cause of action, so as to authorize it to *take cognizance* of it under the provisions of the Removal Statute, when it does not in the first place have jurisdiction to entertain and decide it upon its merits, is to give sanction to an exercise in futility.

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19. 113 U. PA. L. REV. 1096, 1098 (1965).

> "Or putting it another way, for a court to say that it has *subject matter jurisdiction* enabling it to take cognizance of a case, and then to rule that although the case has merit, it is without judicial power, viz., jurisdiction, to grant a final decree on the merits, is to pursue, what Mr. Justice Frankurter once characterized, in another context, a 'fox-hunting theory of justice that ought to make Bentham's skeleton rattle,'. . . ." *Id.* at 842.[20]

Moreover, the words "original jurisdiction" in the removal statute must necessarily refer to the jurisdiction of the federal district courts as that jurisdiction has been set forth in the various statutes by which Congress has exercised its constitutional power to define the jurisdiction of courts of the United States.

In enacting Norris-LaGuardia, Congress was acting under that constitutional power.[21] The legislative history[22] and the very language of the Act are most explicit on this point. Norris-LaGuardia is entitled "An Act to Amend the Judicial Code and to Define and Limit the Jurisdiction of Courts Sitting in Equity, and for Other Purposes." 47 Stat. 70 (1932). Section 13(d) of the Act defines "court of the United States" as "any court of the United States

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20. The Court relied on *Minnesota v. Northern Securities Co.*, 194 U. S. 48 (1904) where this Court, in holding an action to have been improperly removed, stated:

> "If the record does not affirmatively show jurisdiction in the circuit court, we must, upon our own motion, so declare, and make such order as will prevent that court *from exercising an authority not conferred upon it by statute.*"
>
> "We proceed, therefore, to inquire whether the circuit court *could take cognizance of this case* upon removal from the state court, and *make a final decree upon the merits.*" *Id.* at 63 (emphasis added by Court of Appeals).

21. *McCarroll v. Los Angeles County Dist. Council of Carpenters*, 49 Cal. 2d 45, 63, 315 P. 2d 322, 332 (1957), *cert. denied*, 355 U. S. 932 (1958).

22. H. R. REP. No. 669, 72d Cong., 1st Sess. 3, 11, 12 (1932); 75 CONG. REC. 4626 (Remarks of Sen. Blaine).

whose jurisdiction has been or may be conferred or defined or limited by Act of Congress. . . ." This Court has characterized Congress' action in passing this legislation as "[an exercise of] its plenary control over the jurisdiction of the federal courts." *Brotherhood of Ry. Trainmen v. Toledo, Pac. & W. R. R.*, 321 U. S. 50, 63-64 (1943); *cf., Lockert v. Phillips,* 319 U. S. 182 (1943). The removal statute cannot be construed in a vacuum; it must be construed in light of Norris-LaGuardia. When so construed, it is plain that federal courts in labor injunction cases lack original jurisdiction by virtue of Norris-LaGuardia.

With state court injunctive power so vitally a part of § 301, it was particularly improper for the Court below to have recruited appellant's prayer for general relief and F. R. C. P. 54(c) [23] in order to characterize the action as one for relief other than an injunction so that the action might be brought within the scope of the removal statute.

By filing their motion to dismiss, even respondents acknowledged that this action was solely for injunctive relief. If this case involved other relief, *i.e.,* damages or a declaratory judgment, such a motion would have been most inappropriate.

The prayer for general relief was only pleader's surplusage, and F. R. C. P. 82 prohibits F. R. C. P. 54(c) from being used to confer jurisdiction upon the Court.

In *Oman Const. Co. v. Int'l Bro. of Teamsters, Local 327,* 263 F. Supp. 181, 183 (M. D. Tenn. 1966) the same district court which refused to remand the present case acknowledged that the present case was not distinguishable from one where there was no prayer for general relief.

Rule 82 provides that the Federal Rules of Civil Procedure "shall not be construed to extend or limit the jurisdiction of the United States district courts." The authority conferred by 54(c) to grant relief not demanded applies

23. ". . . every final judgment shall grant the relief to which the party in whose favor it is rendered is entitled, even if the party has not demanded such relief in his pleadings."

only when jurisdiction has attached and for the purpose of doing substantial justice without the impediment of any technical rules of pleading. However, the plaintiff is master of his claim; while he cannot deprive the district court of jurisdiction in a proper case, neither can the court take jurisdiction because of a claim for relief which the plaintiff might have asserted but did not and does not want. *Merchants Refrig. Co. of Calif. v. Warehouse Union,* 213 F. Supp. 177, 178 (N. D. Cal. 1963). In filing its motion for reconsideration in the district court, Avco made clear that it sought only injunctive relief (A. 23).

Finally, it is well established that removal should not be allowed in cases of doubt. See, *e.g., Shamrock Oil & Gas Corp. v. Sheets,* 313 U. S. 100 (1941); *Glucksman v. Columbia Broadcasting System, Inc.,* 219 F. Supp. 767, 768 (S. D. Cal. 1963). Where want of federal jurisdiction would make futile the litigation in the federal court, every doubt should be resolved in favor of remand. *Rodriguez v. Union Oil Co.,* 121 F. Supp. 824, 828 (S. D. Cal. 1954). No less should be done where removal serves to defeat the fundamental congressional policies reflected in § 301 of the Labor Management Relations Act of 1947.

CONCLUSION.

For the above reasons, this action for injunctive relief against violation of a no-strike clause should have been remanded to the state court. The lack of original jurisdiction in the district court dictates this conclusion. More importantly, remand would compel the union and employees to use the peaceful procedures of the collective bargaining agreement and thereby achieve one of the prime objectives of § 301. Remand will give effect to the basic objective of § 301 to supplement, and not destroy, existing state remedies for the enforcement of collective bargaining agreements. The Norris-LaGuardia Act was never intended to

impose any restraint upon state court injunctive powers and enactment of § 301 did not change this situation.

The judgment should be reversed and remanded with a direction that it be remanded to the state court.

Respectfully submitted,

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